

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THE BOARD OF TRUSTEES OF  
JOHNSON COUNTY COMMUNITY  
COLLEGE,

Plaintiff,

v.

NATIONAL GYPSUM COMPANY,

Defendant.

No. 88-2031-0

Kansas City, Kansas

January 9, 1990

VOLUME I  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE EARL E. O'CONNOR  
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Plaintiff:

HUMPHREY, FARRINGTON &  
McCLAIN, P.C.  
123 West Kansas  
Independence, Missouri 64050  
By: Mr. Kenneth B. McClain

POPHAM, CONWAY, SWEENEY,  
FREMONT & BUNDSCHU, P.C.  
1300 Commerce Trust Building  
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Kansas City, Missouri 64106  
By: Mr. John M. Klamann

BENNETT, LYTLE, WETZLER  
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By: Mr. Robert F. Lytle

APPEARANCES  
(Continued)

For the Defendant:

HOYLE, MORRIS & KERR  
One Liberty Place  
Suite 4900  
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By Ms. Susan Herschel and  
Mr. Wayne W. Suojanen

LATHROP, KOONTZ & NORQUIST  
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By: Mr. Thomas A. Ryan

Court Reporter:

Mrs. Roberta Bishop  
United States Court Reporter  
122 United States Courthouse  
812 North 7th Street  
Kansas City, Kansas 66101

1        regard to any anecdotal evidence of personal  
2 injury and so forth, it's almost impossible to rule on that in  
3 advance, but the general rule is, of course, that you've got  
4 to show sufficient similarity that it would be relevant, and I  
5 mean similarity on many factors, not just the fact that  
6 somebody developed something from some exposure without just  
7 -- you can't be bare bones, that is what I am saying. But I  
8 can't make any really advance ruling on that till I hear the  
9 evidence.

10        The defendant's motion to exclude the testimony of  
11 Hatfield in regard to a sample taken during December 1989, I  
12 am not very impressed with the defendant's argument, and my  
13 tentative ruling is going to be that that evidence is going to  
14 be admissible.

15        Any bifurcation of trial, of course, that is denied.

16        Now, getting to plaintiff's motions. First motion  
17 has to do with hearsay newspaper articles that the defendants  
18 may want to use in regard to an EPA employee or -- I don't  
19 know whether he's an expert or not, but, again, it's very  
20 difficult for the Court to rule in advance on that. As I  
21 understand from the plaintiff's response, they're saying that  
22 this employee, in effect, adopted these newspaper articles, or  
23 something to that effect, so they may be admissible. I don't  
24 know. But I can't rule on that at this time.

25        The exclusion of the testimony of Russell Ward, the